

August 30, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Daniel Bailey appeals his sentence following his conviction for Voluntary Manslaughter, a Class A felony, pursuant to a plea agreement. He presents a single issue for our review, namely, whether the trial court abused its discretion when it imposed an enhanced sentence of forty years.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 15, 1994, Bailey shot Thomas Wilson in the head, and Wilson died as a result of the gunshot wound. The State charged Bailey with murder and carrying a handgun without a license. A jury found Bailey guilty as charged, and the trial court entered judgment accordingly and sentenced him to fifty-five years.

On direct appeal, our supreme court reversed Bailey's convictions and remanded for a new trial. See Bailey v. State, 669 N.E.2d 972 (Ind. 1996). But Bailey and the State entered into a plea agreement whereby Bailey pleaded guilty to voluntary manslaughter, a Class A felony, and the State dismissed the charges for murder and carrying a handgun without a license. The plea agreement left sentencing to the trial court's discretion, but imposed a forty-year cap on Bailey's sentence. The trial court sentenced Bailey to forty years. This appeal ensued.

DISCUSSION AND DECISION

Bailey contends that the trial court abused its discretion when it imposed an enhanced sentence. In particular, he maintains that the trial court erred when it considered the impact of the crime on the victim's family as an aggravator. Bailey also contends that the trial court should have assessed mitigating weight to his guilty plea. Finally, he asserts that a proper weighing of the valid aggravators and mitigators should result in the imposition of the presumptive sentence.

Sentencing decisions lie within the sound discretion of the trial court and are reviewed only for an abuse of that discretion. Powell v. State, 751 N.E.2d 311, 314 (Ind. Ct. App. 2001). If the sentence imposed is authorized by statute, we will not revise or set aside the sentence unless it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B); McCann v. State, 749 N.E.2d 1116, 1121 (Ind. 2001).

At sentencing, the trial court identified three aggravators, namely: (1) Bailey's criminal history, including juvenile adjudications; (2) his violation of the conditions of a suspended commitment to Boys School as a juvenile; and (3) the recommendation of the victim's family that the maximum sentence be imposed. On appeal, Bailey challenges the validity of the victim impact aggravator.¹ As Bailey correctly notes, our supreme court has held that "under normal circumstances the impact upon family is not an

¹ Bailey does not challenge the validity of the other two aggravators.

aggravating circumstance for purposes of sentencing.” Bacher v. State, 686 N.E.2d 791, 801 (Ind. 1997). Here, as in Bacher, “nothing in the trial court’s statement at sentencing suggests that the impact on the victim’s [family] is of the type so distinct so as to rise to the level of an aggravating circumstance.” Id. Accordingly, the trial court erred when it considered the impact upon the victim’s family as an aggravator.

Bailey next contends that the trial court should have assessed mitigating weight to his guilty plea. It is well settled that the finding of mitigating circumstances is within the discretion of the trial court. Hackett v. State, 716 N.E.2d 1273, 1277 (Ind. 1999). The trial court is not obligated to explain why it did not find a factor to be significantly mitigating. Chambliss v. State, 746 N.E.2d 73, 78 (Ind. 2001). An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Matshazi v. State, 804 N.E.2d 1232, 1239 (Ind. Ct. App. 2004), trans. denied.

Here, Bailey cannot demonstrate that his guilty plea is entitled to significant mitigating weight because the State expended substantial resources on a jury trial. Further, Bailey received a substantial benefit in that the State dismissed the murder and carrying a handgun without a license charges in exchange for his plea to voluntary manslaughter. See Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) (holding guilty plea not worthy of significant mitigation where defendant receives substantial

benefit), trans. denied. We cannot say that the trial court abused its discretion when it did not find Bailey's guilty plea to be a mitigator.

Finally, Bailey asks that we reweigh the valid aggravators and mitigators and revise his sentence. Bailey maintains that "[e]liminating the improper aggravator leaves two others, Bailey's criminal history and the fact that he violated the terms of a suspended commitment to boy's school as a juvenile. While addressed separately by the trial court, these two aggravators are essentially the same thing—a demonstration of prior criminal propensity." Brief of Appellant at 12. And Bailey states: "Balancing that [criminal] history, a proper aggravating factor, against the fact of his plea agreement and acceptance of responsibility in this case should yield the presumptive sentence or, perhaps, a slightly aggravated sentence." Id. at 13.

Here, again, the presumptive sentence for a Class A felony at the time Bailey committed the instant offense was twenty-five years. And while Bailey is correct that the trial court improperly considered the victim impact aggravator, we disagree that the trial court abused its discretion when it did not find his guilty plea mitigating. Bailey's criminal history is not insignificant. His juvenile history includes adjudications for conversion, battery, and possession of cocaine. And, as the trial court noted, Bailey violated conditions of his suspended commitment to the Indiana Boys School. As an adult, Bailey was convicted of resisting law enforcement, as a Class A misdemeanor; escape, as a Class C felony; and obstruction of justice, as a Class D felony. Moreover, according to the

presentence investigation report, Bailey was on probation at the time of the instant offense. See Ryle v. State, 842 N.E.2d 320, 325 (Ind. 2006) (holding trial court properly considered probationary status at time of offense as indicated in presentence report as aggravator in enhancing sentence).

Weighing the valid aggravators and mitigator, we cannot say that the trial court abused its discretion when it imposed an enhanced sentence. The forty-year sentence is not inappropriate in light of the nature of the offense and Bailey's character.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.